IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.3051 of 2006

to

FIRST APPEAL No.3064 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SPL.LAQ OFFICER - Appellant
Versus
HEIRS OF JUHAJI BHIKHAJI - KESHAJI JUHAJI & ORS.- Respondent(s)

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Appearance :
MR SS PATEL, AGP for Appellant
MR AJ PATEL for Respondent(s)-Claimant(s)

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 02/09/2006

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/ claimants in each Appeal. Mr.S.S.Patel, learned Assistant Government Pleader, states at the Bar that interest of the appellant and that of the respondent No.2 is identical and is not in conflict at all. In view of the statement made at the Bar, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of these Appeals upon the respondent No.2. Having regard to the facts of the case, all the abovenumbered Appeals are taken up for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of

Civil Procedure, the appellant, i.e. the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad, has challenged the legality of common judgment and award dated March 31, 2004, rendered by the learned Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.101 of 1999 to 114 of 1999, by which the Reference Court has awarded additional compensation to the claimants at the rate of Rs.26.61 ps. per sq.mt. over and above the compensation awarded to them at the rate of Rs.1.39 ps. per sq.mt. by the Special Land Acquisition Officer, for their acquired lands.

3. The Executive Engineer, Narmada Project, Division No.18/3, Mehsana, proposed to the State Government to acquire agricultural lands of village Fatepura, Taluka: Detroj, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On consideration of the said proposal, the State

Government was satisfied that agricultural lands of village Fatepura were likely to be needed for the said public purpose. Therefore, Notification under Section 4 of the Act was issued which was published in the official gazette on September 3, 1996. Thereafter, the owners of the lands were served with notices as required under Section 4 of the Act. They opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Fatepura, which were specified in the Notification published under Section 4 of the Act, were needed for public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on March 15, 1997. The interested persons were thereafter served

with notices for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated August 27, 1998, offered compensation to the claimants at the rate of Rs.1.39 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were numbered as noticed earlier.

4. On behalf of the claimants, witness Bhawanbhai Ambalal was examined at Ex.24 whereas on behalf of the acquiring body, witness Rameshbhai Ranchodbhai Rajpal was examined at Ex.26. The witness examined for the claimants stated on oath that the lands acquired were highly fertile and that each claimant was able to raise three different crops in a year. What was asserted by the said witness was that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per Vigha per year from sale of agricultural produces. During the course of tendering his evidence, the said witness produced previous award of the District Court dated November 14, 2003, relating to the lands of village Fatepura rendered in Land Acquisition Reference No.85 of 1999 to 91 of 1999, wherein, the District Court had awarded compensation to the claimants at the rate of Rs.28/- per sq.mt., as well as another award of the District Court dated November 14, 2003, relating to the lands of village

Fatepura rendered in Land Acquisition Reference No.92 of 1999 to 100 of 1999, wherein also, the District Court had awarded compensation to the claimants at the rate of Rs.28/- per sq.mt., and asserted that the claimants should be paid enhanced compensation on the basis of those two previous awards. This witness was cross-examined by the learned District Government Pleader. During the course of his cross-examination, the witness denied the suggestion made to him that the claimants were able to raise crops only during monsoon season and that no irrigation facility was available to the acquired lands. However, he admitted that there was no documentary evidence with him to establish that irrigation facilities were available to the acquired lands. The said witness further stated in his cross-examination that Katosan road was passing five kilometers away from the village. It was also admitted by him that no claimant was maintaining accounts to show

as to what was the income from the sale of the agricultural produces. The said witness was further cross-examined by the learned advocate for the acquiring body. During the course of cross-examination made on behalf of the acquiring body, it was admitted by the said witness that the income which was mentioned by him in his examination-in-chief was approximate income.

5. The witness Rameshbhai Ranchodbhai Rajpal, who was examined by the acquiring body, stated in his testimony that he was serving as Deputy Executive Engineer, Mehsana, and had seen the acquired lands. According to him, the Special Land Acquisition Officer had awarded compensation after considering the relevant factors and therefore, the claimants were not entitled to enhanced compensation. However, during the course of cross-examination by the learned advocate for the claimants, he had to admit that he had no personal knowledge about the proceedings

which were initiated for acquiring the lands in question and that he was deposing before the Court only on the basis of official record.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that two previous awards of the Reference Court relating to the lands of village Fatepura, which were produced at Ex.22 and Ex.23, were relevant as well as furnished good guidance for the purpose of determining the market value of the lands acquired subsequently from the same village. Placing reliance on those two awards, the Reference Court has awarded additional compensation at the rate of Rs.26.61 ps. per sq.mt. to the claimants by judgment and award dated March 31, 2004, giving rise to the abovenumbered Appeals.

7. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the

appellant as well as Mr.A.J.Patel, learned counsel for the claimant/claimants in each Appeal. This Court has also considered the oral as well as documentary evidence produced by the learned counsel for the parties for perusal of the Court.

8. From the record of the case, it is evident that enhanced compensation was never claimed by the claimants on yield basis and therefore, the assertion made by the witness Bhawanbhai Ambalal that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per Vigha per year from sale of agricultural produces is of little relevance. Admittedly, no sale-deed was produced or relied upon by the claimants in support of their claim for enhanced compensation. What was relied upon by the claimants for claiming enhanced compensation was two awards of the Reference Court relating to the lands of village Fatepura. Ex.22 indicates that lands of village

Fatepura, Taluka: Detroj, were acquired for the public purpose of Narmada Canal pursuant to publication of Notification issued under Section 4 of the Act in the official gazette on September 3, 1996. Therein, the claimants had claimed compensation at the rate of Rs.50/- per sq.mt. The Special Land Acquisition Officer, by his award dated August 27, 1998, had offered compensation to the claimants at the rate of Rs.1.39 ps. per sq.mt. Feeling aggrieved, References were sought and the Reference Court, by judgment and award dated November 14, 2003, awarded total compensation to the claimants at the rate of Rs.28/- per sq.mt. Similarly, Ex.23, which is also previous award of Reference Court relating to the lands of village Fatepura, Taluka: Detroj, indicates that the lands of village Fatepura, were acquired for the public purpose of Narmada Canal pursuant to publication of Notification issued under Section 4 of the Act in the official gazette on September 3, 1996. Therein also, the

Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.39 ps. per sq.mt. as a result of which, References were sought and the Reference Court, by judgment and award dated November 14, 2003, awarded total compensation at the rate of Rs.28/- per sq.mt. to the claimants.

9. During the course of hearing of the Appeals, Mr.A.J.Patel, learned counsel for the claimants, has produced simple copy of the Judgment dated May 13, 2006, delivered by the Division Bench of this Court (Coram: B.J.Shethna & M.C.Patel, JJ.) in First Appeal Nos.1042 to 1048 of 2005, which indicates that judgment and award dated November 14, 2003, rendered by the Reference Court in Land Acquisition Reference Nos.85 of 1999 to 91 of 1999 was confirmed by the High Court. The learned counsel for the claimants has also produced another simple copy of order dated June 30, 2006, rendered by the Division Bench of this Court (Coram: J.M.Panchal &

Smt.Abhilasha Kumari, JJ.) in First Appeal Nos.1983 to 1991 of 2006, which indicates that common judgment and award dated November 14, 2003, rendered by the Reference Court in Land Acquisition Case Nos.92 of 1999 to 100 of 1999 was confirmed by this Court. Thus, Ex.22 and Ex.23, which were relied upon by the Reference Court for awarding enhanced compensation to the claimants have attained finality. It is well settled principle of law that the previous awards of the Reference Court relating to the lands of the same village, which have attained finality, can be relied upon for the purpose of determining the market value of the lands acquired from the same village subsequently. Here, in this case, the witness Bhawanbhai Ambalal examined at Ex.24 has categorically stated that the earlier lands which were acquired from this village were similar in all respects to the lands acquired in the instant cases. The said assertion could not be demonstrated to be false during his cross-examination. Under the

circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous awards of the Reference Court relating to the lands of this very village while determining the market value of the lands acquired in the instant cases. There is no manner of doubt that on the basis of previous awards of the Reference Court, the claimants in the instant cases would be entitled to compensation at the rate of Rs.28/- per sq.mt.

10. On re-appreciation of facts, this Court finds that the facts brought on the record were correctly appreciated by the Reference Court and correct principles of law have been applied to the proved facts. On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the appellant to interfere with the award impugned in the instant Appeals and therefore, the Appeals, which lack merit, deserve to be dismissed.

11. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this Judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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